

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 158/2005
(Laxmi Narayan Vs. State of Rajasthan & Anr.)

Date of Order : 20/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. R.S.Gill for the petitioner.
Mr. Kailash Khatri for the non-petitioner No.2.
Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

By the instant criminal misc. Petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 16.12.2004 passed by Additional Sessions Judge No.2, Sri Ganganagar Camp Suratgarh (for short 'the revisional court' hereinafter) in Criminal Revision No. 37/2003 whereby the revision petition filed by the petitioner against the order dated 16.10.2003 passed by Additional chief Judicial Magistrate, Suratgarh on an application filed by non-petitioner No.2 under Section 125 Cr.P.C., was dismissed. Aggrieved by the order impugned passed by the trial court and the revisional court, the petitioner has filed the instant criminal misc. petition.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the revisional court as also by the trial court. I have also carefully gone through the petition filed by the non-petitioner No.2 seeking maintenance as also reply filed by the petitioner.

In the reply to the application filed by non-petitioner No.2, the petitioner came with a specific case that the non-petitioner No.2 had illicit relation with one Narendra and had been living with him at her own as his wife and therefore, took a plea as envisaged under Sub-section (4) of Section 125 Cr.P.C., and it is averred that the non-petitioner No.2 is not entitled for maintenance as she is living in adultery. Despite there being specific plea taken in the reply and the evidence was also led to this effect by the petitioner, without adverting to the same, the trial court has straightway decided the application filed by non-petitioner only on one point i.e. As to whether the non-applicant petitioner having sufficient means is refusing to maintain the applicant-non-petitioner ? If yes, then what maintenance allowance should be granted ? which is evident from the order of the trial court. In the circumstances, therefore, the matter deserves to be remanded to the trial court to decide the matter afresh keeping in view the stand taken by the petitioner in his reply regarding the non-petitioner No.2 living in adultery with

Narendra and the evidence produced by the parties before it.

Consequently, the misc. petition is allowed. The order passed by the trial court dated 16.10.2003 and order of the revisional court dated 16.12.2004 affirming the order of the trial court, are set aside and the matter is remanded to the trial court to decide the matter afresh keeping in view the pleadings filed by the parties and the evidence led in support thereof. Stay petition also stands disposed of.

(H.R.PANWAR),J.

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